



November 7, 2025

Cathryn Stewart
Chair
Colorado Solid and Hazardous Waste Commission
Colorado Department of Public Health and Environment
4300 Cherry Creek S Dr, BLDG A
Denver, CO 80246

RE: Comments in Response to the Colorado Department of Public Health and Environment's Hazardous Materials and Waste Management Division's Revised Proposed Amendments to Section 18 of the Regulations Pertaining to Solid Waste Sites and Facilities

Dear Chair Stewart and Members of the Colorado Solid and Hazardous Waste Commission:

The American Coatings Association (ACA) submits the following comments to the Colorado Department of Public Health and Environment's (CDPHE) Solid and Hazardous Waste Commission (Commission) regarding the CDPHE's Hazardous Materials and Waste Management Division's (Division) Revised Proposed Amendments to Section 18 of the Regulations Pertaining to Solid Waste Sites and Facilities (Revised Proposed Amendments). ACA is a voluntary, nonprofit trade association working to advance the needs of the paint and coatings industry and the professionals who work in it. The organization represents paint and coatings manufacturers, raw materials suppliers, distributors, and technical professionals. ACA serves as an advocate and ally for members on legislative, regulatory, and judicial issues, and provides forums for the advancement and promotion of the industry and coatings science. ACA appreciates the opportunity to comment and looks forward to working with the Commission throughout the rulemaking process.

ACA provides the following recommendations to alleviate any undue burden imposed on the paint and coatings industry.

1. Revise the proposed definition for the term, 'small business.'

Under the Producer Responsibility Program for Statewide Recycling Act (HB 22-1355), beginning July 1, 2025, producers are prohibited from selling and/or distributing any products using covered materials in or into the state of Colorado unless they participate in the producer responsibility organization's program. Certain producers are exempt from HB 22-1355's requirements, including those that grossed less than \$5,000,000 in total revenue during the prior calendar year (i.e., small businesses).

The Division has proposed defining the term, 'small business,' as "an individual business at a physical business location that has less than the total annual gross *global* sales..." (emphasis added). This definition does not align with HB 22-1355's producer exemption for small businesses because it does not take into account the actual amount of revenue generated by a company from business activities conducted within the state of Colorado. The Division's proposed definition will unfairly burden members of the paint and coatings industry by requiring companies with over \$5,000,000 in total annual revenue, no matter the actual size of the company's business activities in Colorado, to comply with HB 22-1355's requirements and fee structure. Accordingly, ACA urges the Commission to revise the proposed definition for the term, 'small business,' to the following: "an



individual business at a physical business location that has less than the total annual gross sales *in Colorado* as adjusted annually by the Consumer Price Index as specified in Section 1.8.2.”

2. Revise Section 18.2.7 to provide that producers may request a hearing to contest *any* assessed dues.

As it stands, Section 18.2.7 of the Revised Proposed Amendments applies only to instances when a producer requests a hearing to contest whether the application of eco-modulation factors complied with HB 22-1355, the regulations, and/or the relevant program plan. Draft versions of the Revised Proposed Amendments would have granted producers the ability to contest whether *any* assessed dues complied with HB 22-1355, the regulations, and/or the relevant program plan. ACA is appreciative of the Division’s attempt to establish a procedure for producers to contest the application of eco-modulation factors and the potential increase or decrease of producers’ dues. However, given the burden that producers bear to pay expensive fees to help cover the costs of HB 22-1355’s administration and implementation, ACA supports the enactment of a process that allows producers to contest any assessed dues (e.g., baseline fees, eco-modulation fees, etc.). ACA urges the Commission to revise Section 18.2.7 of the Revised Proposed Amendments to provide that producers may request a hearing before the Producer Responsibility Advisory Board (Advisory Board) to contest whether any assessed dues comply with HB 22-1355, the regulations, and/or the relevant program plan.

3. Revise Section 18.2.7(A) to provide that producers have a minimum of sixty days following the outcome of any required alternative dispute resolution process to request a hearing before the Advisory Board.

Under Section 18.2.7(A) of the Revised Proposed Amendments, producers are required to submit a request for a hearing before the Advisory Board within thirty-five days of any required alternative dispute resolution process’ outcome. The Division’s proposal unfairly burdens members of the paint and coatings industry by subjecting producers to an unreasonably short timeframe to request a hearing. Within the thirty-five-day timeframe, producers are required to prepare a lengthy and detailed hearing request that could entail obtaining records and/or other information not currently in their possession.¹ Accordingly, ACA urges the Commission to revise Section 18.2.7(A) of the Revised Proposed Amendments to provide that producers have a minimum of sixty days following the outcome of any required alternative dispute resolution process to request a hearing.

4. Revise Section 18.2.7(B) to provide that producers will be given the opportunity to amend and resubmit their hearing request should the initial submission neglect to include all requisite information.

Under Section 18.2.7(B) of the Revised Proposed Amendments, if a producer’s hearing request neglects to include all the requisite information, then the producer’s hearing request will be dismissed. The Division’s proposal unfairly burdens members of the paint and coatings industry by requiring producers to submit a practically perfect hearing request within a short timeframe and disallowing the opportunity to correct any accidental omissions. Producers should be given the opportunity to revise their hearing request within a reasonable timeframe upon receiving a notice of incompleteness from the Advisory Board. As such, ACA urges the Commission to revise Section 18.2.7(B) of the Revised Proposed Amendments to provide that

¹ For instance, a producer’s hearing request must include, among others, “a detailed description of the alleged error in the eco-modulation factors included in the producer dues calculations with citations to the specific authority under [HB 22-1355] and any other authorities and/or documents in support” as well as “documentation of completion of all phases of the [alternative] dispute resolution process. . . .”

producers will be given the opportunity to amend and resubmit their hearing request within fourteen days of receiving a notice of incompleteness from the Advisory Board.

- 5. Revise Section 18.2.7(C) to provide that a hearing will be scheduled considering the relevant circumstances and at the next available Advisory Board meeting that gives the producer at least sixty days notice.**

Under Section 18.2.7(C) of the Revised Proposed Amendments, the Advisory Board has the sole discretion to require that a hearing be held either in-person, virtually, or in a hybrid format. The Division's proposal unfairly burdens members of the paint and coatings industry by denying producers the opportunity to declare their preferred format for a hearing and granting the Advisory Board the sole authority to make that decision regardless of the relevant circumstances. Pursuant to the Revised Proposed Amendments, producers will be given at least thirty days notice of the scheduled hearing. If the Advisory Board determines that a hearing is to be held in-person and only provides the producer with thirty days notice, then the producer may face extraordinarily high travel-related costs. ACA urges the Commission to revise Section 18.2.7(C) of the Revised Proposed Amendments to provide that a hearing will be scheduled considering all the relevant circumstances and at the next available Advisory Board meeting that gives the producer at least sixty days notice.

- 6. Revise Section 18.2.7(E) to provide that a producer's obligation to pay any assessed dues is stayed while the hearing request is pending, or, in the alternative, a refund will be issued no later than fourteen days following the Division's Director's final decision.**

Under Section 18.2.7(E) of the Revised Proposed Amendments, a producer's obligation to pay any assessed dues is not stayed while the hearing request is pending. Moreover, in instances where a decision is made in favor of the producer, any refund will be issued at a maximum sixty days from when the Division's Director's decision was made. The Division's proposal unfairly burdens members of the paint and coatings industry by requiring producers to pay expensive fees and wait nearly two months to receive any sort of refund. ACA understands the importance of producers' dues and how they will be used to cover any administration and implementation costs of HB 22-1355. However, producers should not bear the burden of paying any excessive dues prior to contesting them at a hearing and being issued a final decision. Producers also should not have to wait any longer than fourteen days to receive a refund. Accordingly, ACA urges the Commission to revise Section 18.2.7(E) of the Revised Proposed Amendments to provide that a producer's obligation to pay any assessed dues is stayed while the hearing request is pending, or, in the alternative, a refund will be issued no later than fourteen days following the Division's Director's final decision.

Thank you for your consideration of ACA's comments. Please do not hesitate to contact me should you have any questions and/or require further clarification.

Sincerely,

A handwritten signature in black ink, appearing to read "Annebelle Klein", with a large, stylized loop at the end.

Annebelle Klein
Environmental Policy Counsel, Government Affairs